



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS-SC-16-0021; SC16-906-1 IR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Texas Valley Citrus Committee (Committee) to relax the container and pack requirements currently prescribed under the Texas Citrus Marketing Order (order). The order regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The Committee locally administers the order and is comprised of producers and handlers operating within the production area. This rule adds the word "approximate" to the size specifications of three regulated containers to make the language consistent with other containers specified under the order. This change provides uniformity in the descriptions of containers and helps prevent potential compliance violations stemming from slight variations in container dimensions.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule relaxes container requirements currently prescribed under the order by adding the word "approximate" to the size specifications of three regulated containers to make the language consistent with other containers specified under the order. This change provides uniformity in the descriptions of containers and helps prevent potential compliance violations stemming from slight variations in container dimensions. The Committee unanimously recommended the change at a meeting on November 17, 2015.

Section 906.40(d) of the order authorizes the issuance of regulations to fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit. Section 906.340 specifies the container, pack, and container marking regulations under the order. This section specifies, in part, the containers and dimensions currently authorized under the order.

The Committee's Container Subcommittee (subcommittee) reviewed the list of containers authorized under the order and recommended that the Committee modify the descriptions

of three of the containers. The subcommittee informed the Committee that the descriptions of three of the authorized containers specify exact dimensions whereas the remainder of the containers provide approximate dimensions. They stated that with the containers with specific dimensions container manufacturers could inadvertently generate containers that have a small variance in size from the specific requirements of the order causing a handler to be out of compliance with order requirements. The subcommittee noted that the remainder of the containers allow for such an occurrence by using the word "approximate" when providing the dimensions. Consequently, the Committee unanimously voted to add the word "approximate" in the description of the container sizes of the three containers with specific dimensions to make the language consistent with the descriptions of the other containers. The Committee believes this change will provide uniformity in the descriptions of all regulated containers and help prevent potential compliance violations stemming from slight variations in container dimensions.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistics Service, the average

grower price for Texas citrus during the 2014-15 season was around \$9.53 per box and total shipments were near 7.8 million boxes. Using the average grower price and shipment information, and assuming a normal distribution of production among all producers, the majority of producers would have annual receipts of less than \$750,000. In addition, based on Committee information, the majority of handlers have annual receipts of less than \$7,500,000 and could be considered small businesses under SBA's definition. Thus, the majority of Texas citrus producers and handlers may be classified as small entities.

This rule changes § 906.340 of the container, pack, and container marking requirements currently prescribed under the order. This rule adds the word "approximate" to the size specifications of three regulated containers to make the language consistent with other containers specified under the order. This change provides uniformity in the descriptions of containers and helps prevent potential compliance violations stemming from slight variations in container dimensions. Authority for this change is provided in § 906.40.

This action is not expected to impose any additional costs on the industry. However, it is anticipated that this action will have a beneficial impact. Adding the word "approximate" to the dimension requirements for the containers with specific dimensions could prevent possible order violations or potential extra costs associated with replacing incorrect cartons should container manufacturers inadvertently generate containers that do not meet order requirements. The benefits of this rule are expected to be equally available to all fresh orange and grapefruit growers and handlers, regardless of their size.

Regarding alternatives to this action, the Committee considered making no changes to the container dimensions, but determined that making the recommended change provides consistency in the descriptions of all regulated containers and would help prevent potential order violations. Therefore, the Committee rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a

result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 17, 2015, meeting was a public meeting and all

entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Container Subcommittee met on November 11, 2015, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the container and pack requirements currently prescribed under

the Texas citrus marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relaxes the current container and pack requirements; (2) the industry is currently shipping oranges and grapefruit; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906 - ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 906.340, paragraphs (a)(1)(i) through (iii) are revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) * * *

(i) Closed fiberboard carton with approximate inside dimensions of 13 $\frac{1}{4}$ x 10 $\frac{1}{2}$ x 7 $\frac{1}{4}$ inches: Provided, That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with approximate inside dimensions of 16 $\frac{1}{2}$ x 10 $\frac{3}{4}$ x 9 $\frac{1}{2}$ inches:

(iii) Closed fiberboard carton with approximate inside dimensions of 20 x 13 $\frac{1}{4}$ inches and a depth from 9 $\frac{3}{4}$ to 13

inches: Provided, That the container has a Mullen or Cady
test of at least 250 pounds: And Provided further, That the
container may be used to pack any poly or mesh bags
authorized in this section;

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Dated: June 10, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
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